HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 537/06 (M/S)

Ramesh Kumar
Vs
Inder Kumar Aggarwal and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 10.05.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 537 (MS) OF 2006

Ramesh Kumar,
S/o Sri Harichand,
R/o Jauhari Bhawan Gali Labour Office,
Devpura, Haridwar, Tehsil-Haridwar,
District – Haridwar (Uttaranchal).

.....Petitioner.

Versus

1. Inder Kumar Aggarwal, S/o Shri Ram Kumar Aggarwal, R/o Mohalla Kundarki near Arya Samaj Mandir Morababad, District-Moradabad (U.P.), through General Attorney Gulbir Singh, S/o Baljor Singh, R/o J-316 Shivalik Nagar, B.H.E.L. Ranipur, Haridwar, District-Haridwar (Uttaranchal).
2. District Judge, Haridwar.
3. City Magistrate, R.C. & E.O. Haridwar.

.....Respondents.

Dated: 10.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri N.S. Negi, Advocate for the petitioner and Standing Counsel for the respondents no. 2 and 3. Both the parties have agreed that let the matter be finally disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 26th April, 2006 passed in Rent Control Revision No. 2 of 2004.

Briefly stated, an application was moved by the petitioner for allotment of the property in question on 13th March, 2002 consisting of one room north and south faced along with one room and one kitchen west faced situated on ground floor in the building known as Johri Bhawan, Labour Office Wali Gali Devpura Haridwar, District Haridwar (Uttaranchal) vacated by the tenant namely Sri Sunder Singh Chauhan, previous tenant. After the inspection of the premises in question, the same was allotted in favour of the petitioner on 11.12.2002. In pursuance of the aforesaid allotment, Form-B was issued on 16.12.2002 to the landlord respondent no.1 and the petitioner took the possession of the premises and intimated the R.C. & E.O./City Magistrate Haridwar on 20.05.2003 by registered post vide R.L. No. 1786 dated 22.05.2003.

On coming to know the said allotment, respondent no. 1 filed an application under Section 16(5) of U.P. Act No. 13 of 1972 for the review of the order of allotment. The said application was rejected by the Rent Control and Eviction officer/City Magistrate on 15.10.2003 on the ground of its maintainability.

Feeling aggrieved by the order dated 15.10.2003, respondent no. 1 filed R.C. Revision No. 2 of 2004 Inder Kumar Vs. City Magistrate, Haridwar and others, which was allowed by the learned District Judge, Haridwar the revisional court has set aside the order dated 15.10.2003 and the matter has been sent to the Rent Control and Eviction Officer for deciding afresh in the light of the observations made by the District Judge.

A perusal of the order passed by the District Judge shows that the revisional Court has found that the allotment proceedings were ex parte and therefore, the application filed

under Section 16(5) was allowed. Section 16(5) of the U.P. Act No. 13 of 1972 is quoted below:-

"(5)(a) Where the landlord or any other person claiming to be a lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with Clause (a) or Clause (b), as the case may be, or sub-section (1), District Magistrate may review the order:

Provided that no application under this clause shall be entertained later than seven days after the eviction of such person.

(b) Where the District Magistrate on review under this sub-section sets aside or modifies his order of allotment or release, he shall put or cause to be put the applicant, if already evicted, back into possession of the building, and may for that purpose use or cause to be used such force as may be necessary."

The revisional Court has recorded a finding that the order was passed by the City Magistrate without hearing the respondent no. 1 and has been passed in violation of the proviso to Section 16 of the Act. The same is quoted below:-

"16. Allotment and release of vacant building.-(1) Subject to the provisions of the Act, the District Magistrate may by order-

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land alone, to any person specified in the order (to be called an allotment order); or

(b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order):

[Provided that in the case of a vacancy referred to in sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a).]"

The revisional court after hearing the revision has found the ground of the respondent no. 1 being satisfactory and has allowed the revision, I find no illegality in the order passed by the court below.

Counsel for the petitioner has submitted that in pursuance of the allotment, he has taken possession. Therefore, till the pendency of the disposal of the application filed by the respondent no. 1, the petitioner shall not be dispossessed from the premises in dispute.

In view of the aforesaid averments, Rent Control and Eviction Officer/City Magistrate is directed to dispose of the application filed by the respondent no.1 within a period of four months from the date of production of the certified copy of the order. Till the disposal of the said application, the petitioner shall not be evicted. However, petitioner undertakes to abide by the decision of the Rent Control and Eviction Officer under Section 16(5) of the Act. Petitioner shall also pay a sum of Rs. 250/- per month towards use and occupation of the premises from the date, he occupied the premises.

Subject to the aforesaid, Writ Petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

10.05.2006
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